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5 Attorneys for Plaintiff, Kimberly Beagle

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8 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
9

10 KIMBERLY BEAGLE,

11 Plaintiff,

12 vs.

13 RITE AID CORPORATION, a corporation;
14 and DOES 1-100, inclusive,

15 Defendants.

Case No.: CV08-1517-PJH

PLAINTIFF'S REQUEST FOR JUDICIAL
NOTICE IN OPPOSITION TO MOTION
TO DISMISS DISABILITY
HARASSMENT CAUSE OF ACTION FOR
LACK OF SUBJECT MATTER
JURISDICTION

Date: Wednesday, June 4, 2008

Time: 9:00 a.m.

Dept.: Courtroom 3, 17th Floor

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19 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

20 Pursuant to Federal Rule of Evidence 201(d), Plaintiff, KIMBERLY BEAGLE
21 (hereinafter, BEAGLE) requests that the court take judicial notice of the following documents:

- 22 1. Portions of the Department of Fair Employment and Housing's (DFEH) file
23 concerning BEAGLE'S complaints against RITE AID, Case #E200506A1323-00-S, including:
24 (a) BEAGLE'S DFEH Amended Complaint of Discrimination (signed January 29, 2007 /
25 Amended File Date February 7, 2006) along with BEAGLE'S January 28, 2007 letter to DFEH
26 employee, Jackie Jones. A true and correct copy of BEAGLE'S DFEH Amended Complaint of
27
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1 Discrimination with BEAGLE'S January 28, 2007 letter to Jackie Jones is attached hereto as
2 Exhibit A.

3 (b) The DFEH'S Case Diary Notes for Case #E200506A1323-00-S. A true and correct
4 copy of the Department of Fair Employment and Housing's Case Diary Notes for Case
5 #E200506A1323-00-S are attached hereto as Exhibit B.

6 (c) BEAGLE'S DFEH Complaint of Discrimination (filed June 9, 2006). A true and
7 correct copy of BEAGLE'S DFEH Complaint of Discrimination (filed June 9, 2006) is attached
8 hereto as Exhibit C.

9 (d) BEAGLE'S March 4, 2007 written statement. A true and correct copy of BEAGLE'S
10 March 4, 2007 written statement is attached hereto as Exhibit D.

11 **DATED:** May 14, 2008

12 **MAYALL, HURLEY, KNUTSEN, SMITH & GREEN**

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14 By /s/ Mark S. Adams
15 MARK S. ADAMS
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EXHIBIT A

EMPLOYMENT**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**DFEH # E200506A1323-00-sEEOC # N/A

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (indicate Mr. or Ms.)

BEAGLE, KIMBERLY (MS.)

ADDRESS

3430 Hillras

TELEPHONE NUMBER (INCLUDE AREA CODE)

707-834-8091

CITY

Fortuna

STATE

CA

ZIP

95540

COUNTY

Humboldt

COUNTY CODE

023**NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP
COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:**

NAME

RITE AID

ADDRESS

725 Fortuna Blvd.

TELEPHONE NUMBER (INCLUDE AREA CODE)

707-725-9314

CITY

Fortuna

STATE

CA

ZIP

95540

COUNTY

Humboldt

COUNTY CODE

023

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX[ES])

☐ RACE ☒ SEX ☐ DISABILITY ☐ RELIGION ☐ NATIONAL ORIGIN/ANCESTRY ☐ DENIAL OF FAMILY/MEDICAL LEAVE ☐ SEXUAL ORIENTATION
☐ COLOR ☐ AGE ☐ MARITAL STATUS ☐ MEDICAL CONDITION (cancer or genetic characteristics) ☐ OTHER (SPECIFY)

NO. OF EMPLOYEES/MEMBERS
CODE**50,000**

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOOK PLACE (month, day, and year) **07/06/05**

RESPONDENT

59

THE PARTICULARS ARE:

AMENDED

- I. During the course of my employment as a Sales Clerk at Rite Aid, I was sexually harassed by Supervisor Chris Young. The last incident occurred on or about July 6, 2005.
- II. I believe I was sexually harassed, which is discrimination on the basis of sex, female. My belief is based on the following:
 - A. From approximately February 1, 2005 to July 6, 2005, I was sexually harassed by Supervisor Chris Young. The harassment was of a verbal and physical nature. The harassment created a hostile work environment.
 - B. The unwanted sexual advances were witnessed by several co-workers. (names on file with DFEH).
 - C. Mr. Young admitted to the harassment. In August 2005, I believe that he may have been terminated after an investigation of harassment allegations by me and other co-workers.
 - D. In July 2005, I resisted the sexual harassment of Chris Young, by telling him, "you can't do that", after he shoved my head between his legs.
 - E. In July 2005, I reported the sexual harassment of Chris Young, to the store Manager Leon Comerer.

MAILED FOR SIGNATURE January 25, 2007

☐ I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to my knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated

1-29-07**FEB 7 - 2007**

COMPLAINANT'S SIGNATURE

*K. Beagle***FEB - 2007**

At

Fortuna

City

BY: SAN FRANCISCO DISTRICT OFFICE

BY: SAN FRANCISCO DISTRICT OFFICE

DFEH-300-01 (12/99)

SF:TB:pw

DATE FILED: **June 9, 2006**

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

AMENDED DATE: **FEB 7, 2006** STATE OF CALIFORNIA

Dear Jackie

1.28.07

I would like to add that the Supervisors at Rite Aid continued to harass me after Mr. Young admitted to wrongdoing and was fired. When I brought my sick leave papers in to be signed after being diagnosed with Post Traumatic Stress Disorder Cinda-supervisor- ~~the~~ literally threw the papers in my face and accused me of forging the Doctors signature. I was denied sick pay. I did report this to the union. They have spread lies about me throughout the community that have been damaging to me and my children.

K. Beyle

EXHIBIT B

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
CASE DIARY

Case #: E200506A1323 -00-s

Federal No.

Complainant BEAGLE, KIMBERLY
Respondent RITE AID

Complainant Representative

Respondent Contact Person

Name

Name Annmarie Liermann

Title

Title Esq.

Firm

Company Kelly, Herlihy & Klein LLP

Address

Address 44 Montgomery St., Ste. 2500

City

City San Francisco

State Zip

State CA Zip 94104

Phone Fax

Phone 415-951-0535 Fax 415-391-7808

Complaint Filed 06/09/2006

PDS 08/11/2006

Served/Opening Letter 06/22/2006

Return Receipt Received/Green Card 06/28/2006

150-Day Letter Sent 11/15/2006

Response Received 10/03/2006

240-Day Letter Sent / /

Response Received Extension Date / /

365-Day Letter Sent / /

Response Reviewed w/Complainant / /

CP Address/Change of Address

14-day letter Sent / /

Address 3430 HILLRAS
City FORTUNA
State CA Zip 95540-
Home Phone 707-834-8091
Msg PhoneTo Mediation / / To Legal / /
Returned / / Returned / /
HUD Letter / / Type of Letter

Total Case Processing Time 8.50

DATE CASE ACTIVITY

05/10/2006 Intake Interview
User ID: ABULLIVT Time: 2.0006/26/2006 Complaint Served
User ID: AWILLIAMP Time: 0.5008/11/2006 pds
User ID: ABULLIVT Time: 0.5008/11/2006 Rp said she will have response in by next week
User ID: ABULLIVT Time: 0.5008/11/2006 pds
User ID: ABULLIVT Time: 0.50

DATE	CASE ACTIVITY
08/11/2006	pds User ID: ABULLIVT Time: 0.50
08/24/2006	pds User ID: ABULLIVT Time: 0.50
08/29/2006	pds User ID: ABULLIVT Time: 0.50
08/31/2006	witness called User ID: ABULLIVT Time: 0.50
08/31/2006	witness called User ID: ABULLIVT Time: 0.25
08/31/2006	called rp/cp about PDS User ID: ABULLIVT Time: 0.50
09/07/2006	messge for cps contact User ID: ABULLIVT Time: 0.25
09/08/2006	pds User ID: ABULLIVT Time: 0.50
09/08/2006	settlement User ID: ABULLIVT Time: 0.50
12/08/2006	prepare case for transfer User ID: ABULLIVT Time: 0.50

Case Time Break Down

Intake	2.00
Investigation	2.00
Negotiation/Settlement	4.00
Caseload Management	0.00
Report Writing/Case Closure	0.00
Case Consultation	0.00
Clerical Activity	0.50

DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
CASE DIARY

Case #:	E200506A1323 -00-s	Federal No.	
Complainant	BEAGLE, KIMBERLY		
Respondent	RITE AID		
Complainant Representative		Respondent Contact Person	
Name		Name	Annmarie Liermann
Title		Title	Esq.
Firm		Company	Kelly, Herlihy & Klein LLP
Address		Address	44 Montgomery St., Ste. 2500
City		City	San Francisco
State	Zip	State	CA Zip 94104
Phone	Fax	Phone	415-951-0535 Fax 415-391-7808
Complaint Filed	06/09/2006	PDS	08/11/2006
Served/Opening Letter	06/22/2006	Return Receipt Received/Green Card	06/28/2006
150-Day Letter Sent	11/15/2006	Response Received	10/03/2006
240-Day Letter Sent	02/05/2007	Response Received Extension Date	//
365-Day Letter Sent	//	Response Reviewed w/Complainant	09/08/2006
CP Address/Change of Address		14-day letter Sent:	02/20/2007
Address	3430 HILLRAS	To Mediation	// To Legal //
City	FORTJNA	Returned	// Returned //
State	CA Zip 95540-	HUD Letter	// Type of Letter
Home Phone	707-834-8091		
Msg Phone			

Total Case Processing Time 44.50

DATE CASE ACTIVITY

05/10/2006	intake Interview User ID: ABULLIVT	Time: 2.00
06/26/2006	Complaint Served User ID: AWILLIAMP	Time: 0.50
08/11/2006	pds User ID: ABULLIVT	Time: 0.50
08/11/2006	Rp said she will have response in by next week User ID: ABULLIVT	Time: 0.50
08/11/2006	pds User ID: ABULLIVT	Time: 0.50

Continued Case Diary: E200506A1323

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DATE	CASE ACTIVITY		
08/11/2006	pds User ID: ABULLIVT	Time: 0.50	
08/24/2006	pds User ID: ABULLIVT	Time: 0.50	
08/29/2006	pds User ID: ABULLIVT	Time: 0.50	
08/31/2006	witness called User ID: ABULLIVT	Time: 0.50	
08/31/2006	witness called User ID: ABULLIVT	Time: 0.25	
08/31/2006	called rp/cp about PDS User ID: ABULLIVT	Time: 0.50	
09/07/2006	message for cps contact User ID: ABULLIVT	Time: 0.25	
09/08/2006	pds User ID: ABULLIVT	Time: 0.50	
09/08/2006	settlement User ID: ABULLIVT	Time: 0.50	
12/08/2006	prepare case for transfer User ID: ABULLIVT	Time: 0.50	
12/20/2006	left voice message with cp User ID: AJONESJ	Time: 0.25	
12/22/2006	telephone message to cp to go over response User ID: AJONESJ	Time: 0.25	
12/27/2006	voice message to cp User ID: AJONESJ	Time: 0.25	
12/27/2006	voice message to cp about going over the response User ID: AJONESJ	Time: 0.25	
12/29/2006	sent a letter to cp requesting additional information User ID: AJONESJ	Time: 0.25	
01/02/2007	reviewed cp's rebuttal User ID: AJONESJ	Time: 1.50	
01/02/2007	letter to cp requesting additional information User ID: AJONESJ	Time: 0.25	
01/11/2007	telephone call to cp to get update on additional information User ID: AJONESJ	Time: 0.25	
01/11/2007	voice message to respondents attorney User ID: AJONESJ	Time: 0.25	

Continued Case Diary: E20C506A1323

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DATE	CASE ACTIVITY	Time:
01/16/2007	voice message to respondent's attorney User ID: AJONESJ	0.25
01/16/2007	talked to respondents attorney requesting additional information User ID: AJONESJ	0.75
01/16/2007	sent a letter to respondent's attorney requesting additional information User ID: AJONESJ	0.25
01/16/2007	voice message to cp User ID: AJONESJ	0.25
01/16/2007	v/m for rep. attorney User ID: AJONESJ	0.25
01/16/2007	talked to rep attorney User ID: AJONESJ	0.25
01/16/2007	processed and mailed request for add'l information User ID: AJONESJ	1.00
01/16/2007	v/m for cp User ID: AJONESJ	0.25
01/18/2007	voice message to cp to return call User ID: AJONESJ	0.25
01/18/2007	voice message to respondent's attorney User ID: AJONESJ	0.25
01/18/2007	v/m for cp User ID: AJONESJ	0.25
01/18/2007	v/m for respondent's rep User ID: AJONESJ	0.25
01/19/2007	attempt to contact cp's witness User ID: AJONESJ	0.25
01/19/2007	interview witness for respondent User ID: AJONESJ	1.25
01/19/2007	received cp's witness information User ID: AJONESJ	0.25
01/19/2007	received and reviewed additional information from respondents attorney User ID: AJONESJ	2.25
01/19/2007	v/m to cp's witness User ID: AJONESJ	0.25
01/19/2007	interviewed witness User ID: AJONESJ	2.25
01/19/2007	received witness for cp User ID: AJONESJ	0.25

Continued Case Diary: E200506A1323

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DATE	CASE ACTIVITY		
01/22/2007	attempt made to contact cp's witness User ID: AJONESJ	Time:	0.25
01/22/2007	spoke with cp's witness User ID: AJONESJ	Time:	0.25
01/22/2007	made an attempt to contact cp's witness User ID: AJONESJ	Time:	0.25
01/22/2007	spoke with witness for respondent User ID: AJONESJ	Time:	0.50
01/22/2007	spoke to respondent's attorney regarding additional information User ID: AJONESJ	Time:	0.25
01/22/2007	spoke with cp's witness User ID: AJONESJ	Time:	1.25
01/22/2007	left voice message to cp User ID: AJONESJ	Time:	0.25
01/22/2007	attempt to contact witness User ID: AJONESJ	Time:	0.25
01/22/2007	v/m to witness User ID: AJONESJ	Time:	0.25
01/22/2007	v/m to witness User ID: AJONESJ	Time:	0.25
01/22/2007	interviewed witness User ID: AJONESJ	Time:	0.50
01/22/2007	talked to respondent rep User ID: AJONESJ	Time:	0.50
01/22/2007	interviewed witness User ID: AJONESJ	Time:	1.00
01/22/2007	v/m to cp User ID: AJONESJ	Time:	0.25
01/23/2007	received and reviewed additional info User ID: AJONESJ	Time:	1.00
01/25/2007	sent amended complaint to cp User ID: AJONESJ	Time:	0.25
01/25/2007	left voice message to cp's witness User ID: AJONESJ	Time:	0.25
01/25/2007	interview cp's witness User ID: AJONESJ	Time:	1.00
01/25/2007	v/m to witness User ID: AJONESJ	Time:	0.25

DATE	CASE ACTIVITY		
01/25/2007	interviewed witness User ID: AJONESJ	Time:	0.75
01/30/2007	received v/m from witness User ID: AJONESJ	Time:	0.25
02/07/2007	received and reviewed cp's amended complaint User ID: AJONESJ	Time:	0.25
02/16/2007	process and mailed amended complaint to cp User ID: AJONESJ	Time:	0.75
02/20/2007	reviewed cp rebuttal User ID: AJONESJ	Time:	2.00
02/20/2007	14-day letter processed and sent User ID: AJONESJ	Time:	2.25
02/26/2007	consultant w/cp User ID: AJONESJ	Time:	1.25
02/27/2007	cp respond to 14-day letter User ID: AJONESJ	Time:	0.50
03/06/2007	received and reviewed additional information from cp User ID: AJONESJ	Time:	1.00
03/12/2007	re'vd response received to 14-day letter User ID: AJONESJ	Time:	0.75
03/12/2007	t/c to witness in response to rebuttal of 14-day letter User ID: AJONESJ	Time:	0.50
03/12/2007	t/c to attorney of respondent User ID: AJONESJ	Time:	0.25
03/12/2007	sent letter of thanks to witness of cp User ID: AJONESJ	Time:	0.25
03/12/2007	talked to respondent rep User ID: AJONESJ	Time:	0.25
03/12/2007	interviewed witness User ID: AJONESJ	Time:	1.00
03/12/2007	process letter to cp's therapist User ID: AJONESJ	Time:	0.25
03/12/2007	interviewed witness User ID: AJONESJ	Time:	0.50

Case Diary: E200506A1323

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Case Time Break Down

Intake	2.00
Investigation	38.00
Negotiation/Settlement	4.00
Caseload Management	0.00
Report Writing/Case Closure	0.00
Case Consultation	0.00
Clerical Activity	0.50

EXHIBIT C

*** EMPLOYMENT ***

**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**

DFEH # E200506 A-1323-00-s

EEOC # N/A

If dual-filed with EEOC, this form may be affected by the Privacy Act of 1974.

CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING and EEOC

COMPLAINANT'S NAME (indicate Mr. or Ms.)

Beagle, Kimberly (Ms.)

ADDRESS

3430 Hillras

TELEPHONE NUMBER (INCLUDE AREA CODE)

(707) 725-1634

CITY	STATE	ZIP	COUNTY	COUNTY CODE
Fortuna	CA	95540	Humboldt	023

**NAMED IS THE EMPLOYER, PERSON, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP
COMMITTEE, OR STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME:**

NAME

Rite Aid

ADDRESS

725 Fortuna Blvd.

TELEPHONE NUMBER (INCLUDE AREA CODE)

(707) 725-9314

CITY	STATE	ZIP	COUNTY	COUNTY CODE
Fortuna	CA	95540	Humboldt	023

CAUSE OF DISCRIMINATION BASED ON (CHECK APPROPRIATE BOX[ES])

☐ RACE ☒ SEX ☐ DISABILITY ☐ RELIGION ☐ NATIONAL ORIGIN/ANCESTRY ☐ DENIAL OF FAMILY/MEDICAL LEAVE ☐ SEXUAL ORIENTATION
☐ COLOR ☐ AGE ☐ MARITAL STATUS ☐ MEDICAL CONDITION (cancer or genetic characteristics) ☐ OTHER (SPECIFY) _____

NO. OF EMPLOYEES/MEMBERS

50,000

DATE MOST RECENT OR CONTINUING DISCRIMINATION

TOOK PLACE (month, day, and year) 07/06/05

RESPONDENT CODE

59

THE PARTICULARS ARE:

- I. During the course of my employment as a Sales Clerk at Rite Aide, I was sexually harassed by Supervisor Chris Young. The last incident occurred on or about July 6, 2005.
- II. I believe I was sexually harassed, which is discrimination on the basis of sex, female. My belief is based on the following:
 - A. From approximately February 1, 2005, to July 6, 2005, I was sexually harassed by Supervisor Chris Young. The harassment was of a verbal and physical nature. The harassment created a hostile work environment.
 - B. The unwanted sexual advances were witnessed by several co-workers. (names on file with DFEH)
 - C. Mr. Young admitted to the harassment. In August 2005, I believe that he may have been terminated after an investigation of harassment allegations by me and other co-workers.
 - D. In July 2005, I resisted the sexual harassment of Chris Young, by telling him, "you can't do that", after he put his face between my legs.

Wrong

EMPLOYMENT**COMPLAINT OF DISCRIMINATION UNDER
THE PROVISIONS OF THE CALIFORNIA
FAIR EMPLOYMENT AND HOUSING ACT**DFEH # E200506 A-1323-00-sEEOC # N/A

COMPLAINANT'S NAME(S) (indicate Mr. or Ms.)

Beagle, Kimberly (Ms.)

RESPONDENT'S NAME

Rite Aid

THE PARTICULARS ARE:

E. In July 2005, I reported the sexual harassment of Chris Young, to the Store Manager Leon Comerer.

Page 2 of 2

Typed and mailed for signature on 06/24/06

☐ I also want this charge filed with the Federal Equal Employment Opportunity Commission (EEOC).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge except as to matters stated on my information and belief, and as to those matters I believe it to be true.

Dated 5-31-06At Fortuna

City

COMPLAINANT'S SIGNATURE

DFEH-300-01 (06/97) SF:TB:pw
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING

DATE FILED: June 9, 2006

STATE OF CALIFORNIA

EXHIBIT D

3-4-07

In response to the letter I received stating that Rite Aid did nothing wrong and that I engaged in horseplay with Chris Young, I would like to bring to light some facts to dispute these statements.

First of all I did not engage in horseplay with Chris or anyone else at Rite Aid. Rite Aid says my coworkers say different but I challenge them to prove who made these statements and what exactly did they hear or see me do? Also if I did encourage him to do this to me why did they fire him and why wasn't I reprimanded?

After Chris was fired certain members of management and coworkers continued to harass me. In August - following the attack on me I went to Rite Aid in Fortuna to pick up my Sick pay paperwork. I had been advised by my doctor and union rep. to avoid the distress of going into the store so I sat in the car while my son and friend went in to retrieve the papers. Supervisor - Linda Hussey came out of the store to the car with the paperwork - which my doctor had signed and began questioning me about the doctor's signature saying that it looked suspicious and demanded to know who the doctor was and where he was located. When I stated that the signature was not

folded and asked her to please give me the papers, she crumpled them up and threw them through the window at me hitting me in the face. Matt Hudson was a witness. I also reported it to my union rep. Ernie Boehm.

A former employee, Kathy Piers told me that Leon Comer - the store manager at the time of this incident told the employees at the store and at the Eureka store that Rite Aid was forcing him to quit because I was pressing sexual harassment charges against him as well. This caused all of management and coworkers to turn against me. I never threatened him in any way with harassment charges. You can call Kathy and verify this. Her number is 707-492-9011.

Several of my coworkers showed me support until Leon intervened with these lies.

I have been diagnosed with Post Traumatic Stress Disorder directly caused by this attack and chain of events. A fact I can prove through my medical records.

This has caused me so much stress and anxiety and humiliation.

The fact that my union rep advised me not to return to work at

the Fortuna Store because of the hostility proves the ongoing harassment against me.

I have outstanding medical bills including physical therapy and counseling that Rite Aid is responsible for. I feel Rite Aid should take care of these bills and ongoing therapy. I still suffer from extreme anxiety and depression.

In conclusion I would like to say that I enjoyed my work at Rite Aid. I was employed for over seven years. If Rite Aid ~~was~~^{is} willing to take care of my medical bills and therapy as well as ~~reinstat~~^{reinstat}e my employment at the Eureka Store I would find this an acceptable solution.

Sincerely K. Beagle